

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

BILL WISSE	ER,	:	
		:	Docket No. 1:19-cv-01445
	Plaintiff,	:	
		:	
	- against -	:	
		:	
VOX MEDIA, INC.,		:	
		:	
	Defendant.	:	
		X	

## ANSWER

Defendant Vox Media, Inc. (“Vox Media”), by and through its undersigned attorney, answers the complaint of Bill Wisser (“Plaintiff”) dated February 14, 2019 (the “Complaint”), as follows, using the same headings and paragraph numbering employed by Plaintiff.

## **RESPONSE TO NATURE OF THE ACTION**

1. Vox Media admits that this purports to be an action for copyright infringement under Section 501 of the Copyright Act but denies that Plaintiff has asserted an actionable claim for copyright infringement. Vox Media further admits that Plaintiff seeks monetary relief pursuant to 17 U.S.C. § 101 *et seq.* but denies that Plaintiff is entitled to any such relief.

## **RESPONSE TO JURISDICTION AND VENUE**

2. To the extent the allegations in Paragraph 2 of the Complaint are deemed to be allegations of law, Vox Media is not required to plead thereto. To the extent that such allegations are deemed to be allegations of fact, Vox Media admits that Plaintiff has made allegations of copyright infringement under the Copyright Act and does not contest the subject matter jurisdiction of this Court.

3. To the extent the allegations in Paragraph 3 of the Complaint are deemed to be allegations of law, Vox Media is not required to plead thereto. To the extent that such

allegations are deemed to be allegations of fact, for purposes of this action only, Vox Media does not contest the Court's personal jurisdiction over it.

4. To the extent the allegations in Paragraph 4 of the Complaint are deemed to be allegations of law, Vox Media is not required to plead thereto. To the extent that such allegations are deemed to be allegations of fact, for the purposes of this action only, Vox Media does not contest that venue is proper in this District.

### **RESPONSE TO PARTIES**

5. Vox Media denies knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 5 of the Complaint.

6. Vox Media admits the allegations of Paragraph 6.

### **RESPONSE TO STATEMENT OF FACTS**

#### **A. Response to Background and Plaintiff's Alleged Ownership of the Photograph**

7. Vox Media denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 7 of the Complaint, except that Vox Media admits that the Complaint purports to contain an Exhibit A, which speaks for itself, and to the extent any further response is required, Vox Media respectfully refers the Court to that Exhibit.

8. Vox Media denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 8 of the Complaint.

9. Vox Media denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 9 of the Complaint.

#### **B. Response to Defendant's Alleged Infringing Activities**

10. Vox Media admits that it updated an article on August 31, 2018 at the Website entitled *12 Places to Score \$1 Oysters in Miami*. Vox Media lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 10 of the Complaint,

except that the Complaint purports to contain an Exhibit B which speaks for itself, and to the extent any further response is required, Vox Media respectfully refers the Court to that Exhibit.

11. Vox Media denies the allegations set forth in Paragraph 11 of the Complaint except that Vox Media admits that it did not communicate directly with Plaintiff for a license to use the Photograph, but denies the allegations contained in this Paragraph to the extent those allegations assume that Vox Media required express permission from Plaintiff.

12. Vox Media denies the allegations set forth in Paragraph 12 of the Complaint except that Vox Media admits Plaintiff previously filed a lawsuit against it.

**RESPONSE TO CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST VOX MEDIA)**  
**(17 U.S.C. § 106, 501)**

13. Vox Media repeats and realleges each and every admission, denial, and referral made in response to Paragraphs 1 through 12 of the Complaint as if made in response to Paragraph 13.

14. Vox Media denies the allegations of Paragraph 14 of the Complaint.

15. Vox Media denies the allegations of Paragraph 15 of the Complaint.

16. Vox Media denies the allegations of Paragraph 16 of the Complaint.

17. Vox Media denies the allegations of Paragraph 17 of the Complaint.

18. Vox Media denies the allegations of Paragraph 18 of the Complaint.

19. Vox Media denies the allegations of Paragraph 19 of the Complaint.

**RESPONSE TO PRAYER FOR RELIEF**

With respect to the WHEREFORE clauses in the Complaint, Vox Media denies that Plaintiff is entitled to any relief, including a declaration or judgment against Vox Media, damages, profits, costs, expenses, attorneys' fees, interest, or any other relief as follows:

1. Vox Media denies that Plaintiff is entitled to the relief sought in Paragraph 1 of the prayer for relief.

2. Vox Media denies that Plaintiff is entitled to the relief sought in Paragraph 2 of the prayer for relief.

3. Vox Media denies that Plaintiff is entitled to the relief sought in Paragraph 3 of the prayer for relief.

4. Vox Media denies that Plaintiff is entitled to the relief sought in Paragraph 4 of the prayer for relief.

5. Vox Media denies that Plaintiff is entitled to the relief sought in Paragraph 5 of the prayer for relief.

6. Vox Media denies that Plaintiff is entitled to the relief sought in Paragraph 6 of the prayer for relief.

**AFFIRMATIVE AND OTHER DEFENSES**

By alleging the defenses set forth below, Vox Media is not in any way acknowledging or conceding that it has the burden of proof on any issue or defense as to which applicable law places the burden on Plaintiff. Vox Media reserves the right to amend its answer and defenses to assert any additional defenses as may later become available or apparent to it during discovery or further proceedings in this action.

**FIRST DEFENSE**

1. The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

2. Upon information and belief, Plaintiff's claim is barred, in whole or in part, to the extent any copyright registration asserted by Plaintiff as covering the Photograph is invalid

and/or unenforceable.

**THIRD DEFENSE**

3. Plaintiff's claim is barred, in whole or in part, by the defense of license and/or implied license arising from agreements between Vox Media, on the one hand, and other parties, on the other, for use of the Photograph as alleged in the Complaint, as well as any course of dealing with such parties.

**FOURTH DEFENSE**

4. Upon information and belief, Plaintiff's claims are barred, in whole or in part, by Plaintiff's lack of standing.

**FIFTH DEFENSE**

5. Plaintiff's claim is barred, in whole or in part, by the doctrine of estoppel.

**SIXTH DEFENSE**

6. Plaintiff's claim is barred, in whole or in part, by the doctrine of misuse of copyright.

**SEVENTH DEFENSE**

7. Plaintiff's claim is barred, in whole or in part, because Plaintiff has failed to mitigate damages.

**EIGHTH DEFENSE**

8. Plaintiff's claim for actual damages is barred, in whole or in part, because Plaintiff has failed to allege any purported actual damages with the requisite particularity, and because such damages are speculative and imprecise.

**NINTH DEFENSE**

9. Plaintiff is not entitled to recover any of Vox Media's profits because such profits,

if any, are not attributable to any alleged infringement and are duplicative of Plaintiff's purported actual damages.

**TENTH DEFENSE**

10. Plaintiff's claim for statutory damages is barred, in whole or in part, because Vox Media has not willfully infringed any intellectual property or other rights owned by Plaintiff and because Vox Media has acted in good faith and without any intention of injuring Plaintiff.

**ELEVENTH DEFENSE**

11. Plaintiff's claim for statutory damages is barred, in whole or in part, to the extent that, when measured against any actual damage suffered by Plaintiff, it would be excessive, obviously unreasonable, and wholly disproportionate in violation of the Due Process clause.

**RELIEF REQUESTED**

WHEREFORE, Vox Media respectfully requests the following relief:

1. A judgment in favor of Vox Media denying Plaintiff all relief requested in the Complaint in this action and dismissing the Complaint with prejudice;
2. That Vox Media be awarded its costs of suit, including reasonable attorneys' fees; and
3. That the Court award Vox Media such other and further relief as the Court deems just and proper.

Dated: New York, New York  
March 12, 2019

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/ Rachel F. Strom  
Rachel F. Strom

1251 Avenue of the Americas, 21st Floor  
New York, NY 10020-1104  
(212) 489-8230 Phone  
(212) 489-8340 Fax  
RachelStrom@dwt.com

*Attorney for Defendant Vox Media, Inc.*

TO: Richard Liebowitz  
11 Sunrise Plaza, Suite 305  
Valley Stream, NY 11580  
Tel: 516-233-1660  
RL@liebowitzlawfirm.com